

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 412 of 1983

With

INCOME TAX REFERENCE NO. 408 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INOCME TAX

Versus

BHIKHABHAI VAJERAM FAMILY TRUST

INCOME TAX REFERENCE No. 408 of 1983

COMMISSIONER OF INCOME TAX

Versus

MANGALDAS BECHARDAS FAMILY TRUST

Appearance:

MR B.B.Naik for Mr. MANISH R BHATT for Petitioner
MR Manish Shah for Mr. JP SHAH for Respondent.

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH
Date of decision: 04/05/98

ORAL JUDGEMENT

(Per R.K.Abichandani,J)

Both these matters involve similar questions and have been argued together by the learned counsel for both the sides.

2. In I.T.R. No. 412 of 1983, the Income-tax Appellate Tribunal has referred the following questions for the opinion of this Court under section 256(1) of the Income-tax Act, 1961.

"1. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the protective assessment made by the Income-tax Officer on the assessee trust was liable to be cancelled ?"

3. In I.T.R. No. 408 of 1983, the questions referred by the Tribunal are as follows:

"1. Whether on the facts and in the circumstances of the case the Tribunal was right in law in coming to the conclusion that the income from the partnership firm M/s. Jayshankar B. Upadhyay was the income of the assessee ?

2. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the income from the firm M/s. Jayshanker B. Upadhyay in the name of the assessee was not the income of Shri Jayshanker B. Upadhyay ?

3. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the protective assessment made by the ITO was liable to be set aside ?"

Both the References pertain to the assessment years 1976-77 and 1977-78. ITR No.412 of 1983

is argued as a lead matter by both the sides with a request to treat their contentions to be the same in ITR No.408 of 1983.

4. In both the Refefences, the assessees are discretionary Trusts. These Trusts were partners in the firm of M/s Jayshankar B. Upadhyay. Admittedly, under the Trust Deeds, the trust could join as partner in a partnership firm. The trustees were authorised specifically to carry on business as proprietor or as a partner in a firm.

5. The ITO rejected the claim of the assessee that the partner who had joined the firm, had joined it in a representative capacity for the Trust and not in his individual capacity. The CIT (Appeals) disagreed with the ITO and held that the share of the income from the firm of M/s. Jayshankar B. Upadhyay was assessable in the hands of the assessee Trust for both the assessment years. The Tribunal found that the view which was taken by the ITO was contrary to the settled legal position, because a trustee can join a partnership firm in a representative capacity.

6. The factual position which was not in dispute was summarised by the Tribunal and it was held that M/s. Jayshankar B Upadhyay was a genuine firm which was duly registered. It was also found that the partnership deed of the firm clearly mentioned the fact that the said partner had joined the firm in his capacity as a trustee of the assessee Trust and was representing the Trust in the firm. It was therefore, held that the assessee Trust was entitled to the share of income from the firm of M/s. Jayshankar B. Upadhyay in which Mr. S.T.Joshi was representing the Trust in both the assessment years. On these findings, it was held that the ITO was wrong in making the assessments on protective basis and holding that the income belonged to these partners who were the trustees, (S.T.Joshi and J.B.Upadhyay), in their individual capacity.

6. There is no dispute about the proposition of law that a trustee can join a partnership firm in a representative capacity. It is also an admitted fact that in the prtnership deed, it was clearly mentioned that these two partners had joined as partners in their representative capacity for and on behalf of these two trusts. It is also an admitted fact that the Trust Deed did authorise trustees to do business either as proprietors or as partners. In this background, we are of the view that the Tribunal was fully justified in

holding that there was no case for making any assessment on protective basis against these persons in their individual capacity. The questions referred to us are therefore, answered in the affirmative against the revenue and in favour of the assesseees. Both the References stand disposed of accordingly with no order as to costs.

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